

## Posting Statement for FERC Order No. 719 Market Monitoring Revisions

### Introduction

In Order No. 719, FERC directed independent system operators and regional transmission organizations to amend their tariffs and change certain aspects of their operations in the following four areas: (1) demand response; (2) long-term power contracting; (3) responsiveness to customers and stakeholders; and (4) market monitoring. The attached draft amendments to the California Independent System Operator Corporation's ("the ISO") current tariff deal exclusively with the fourth area – market monitoring.

The draft market monitoring revisions fall into four categories: (1) organizational changes in the tariff; (2) substantive changes in the responsibility and organization of the Department of Market Monitoring ("DMM"); (3) new provisions covering the ISO's ability to share information with the California Public Utilities Commission ("CPUC"); and (4) changes that mainly involve incorporating language directly from the Order and its associated provisions in the Code of Federal Regulations ("CFR").

### Organization of the Tariff

In the Order, FERC mandated that independent system operators centralize their market monitoring provisions in one section of their tariff, and offered a suggested 12-part organization for the newly-centralized market monitoring section. Order at ¶ 392. Most of the revisions stem from the ISO's efforts to comply with these two aspects of the Order.

At present, nearly all of the market monitoring provisions in the tariff are located in § 38, Appendix P, Appendix P1, and Appendix P2. Section 38 applies to both DMM and the Market Surveillance Committee ("MSC"), Appendices P and P1 apply to DMM, and Appendix P2 applies to the MSC. In centralizing the market monitoring provisions in one section, the ISO faced two choices: (1) where to centralize the market monitoring provisions – in § 38, Appendix P, or some other part of the tariff; and (2) whether to include the DMM and MSC provisions in one section or create separate sections for DMM and the MSC.<sup>1</sup>

Because the bulk of DMM's responsibilities presently are located in Appendix P, the ISO elected to make Appendix P the centralized section for DMM provisions. At the same time, the ISO determined that placing the MSC provisions in a separate section from DMM would more accurately represent the distinct nature of DMM and the MSC. Thus, the ISO chose to centralize the MSC provisions in Appendix O, which previously was vacant.

The ISO also decided to follow FERC's suggested organization for the tariff provisions. Some of the new sections are blank (e.g., § 2 & 10 of Appendices O and P), because

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<sup>1</sup> Because of the ISO's unusual market monitoring structure, which includes both an internal market monitor, *i.e.*, DMM, and an external market monitor, *i.e.*, the MSC, the Order did not provide a complete answer on this matter.

the ISO decided that for reasons of continuity, provisions that conceivably could have gone in those sections were best placed elsewhere. With time, the ISO may consider adding provisions in those sections that intentionally were left blank in the attached draft tariff sections.

#### Substantive Changes to DMM's Responsibilities and Organization

A significant purpose of the market monitoring portions of the Order is to ensure that market monitoring units are sufficiently independent of the independent system operators' management. Two significant principles that follow from this purpose are that market monitoring units:

- (1) Should not be involved in tariff administration or prospective market mitigation. Order at ¶¶ 373-379.
- (2) Should report to the independent system operator's board, but may report to management on administrative matters. Order at ¶ 339.

The first principle is seen largely in the amendments to § 37 of the tariff. This section sets out the Rules of Conduct governing ISO market participants. Under the current tariff, DMM holds significant responsibility for administering these rules. By striking references in § 37 to the "Market Monitoring Unit" and inserting "CAISO," these revisions make clear that going forward, DMM will not engage in tariff administration.

The second principle is seen in § 3.1, which establishes DMM's new reporting structure. Under this structure, DMM will report to the ISO Governing Board for matters pertaining to DMM's core market monitoring functions, but will report to ISO management for administrative purposes. This reporting arrangement is necessitated by the ISO's unique structure as a non-profit public benefit corporation under California law and by state law requirements specifically applicable to the ISO. This reporting arrangement is also necessary because of the ISO's governance structure.

While DMM will report to the CEO for administrative purposes, other provisions in §§ 3 & 4 of Appendix P ensure that DMM will have independence from ISO management on all matters related to core market monitoring functions. For example, § 3.2 states explicitly that DMM has complete control over the content of its reporting on the ISO markets. Similarly, § 4.3 ensures that DMM will always have the resources necessary to carry out its duties independently. Finally, § 3.1 creates the means for DMM to report any concerns about independence directly to the ISO Governing Board.

The ISO believes that the proposed reporting arrangement for DMM meets the Commission's intent and the regulations adopted by Order 719 by ensuring an independent market monitoring apparatus and recognizing the unique features and constraints under which the ISO operates.

#### Sharing Information with the CPUC

Part of the Order addresses the issue of how much information a market monitoring unit should share with a state public utility commission. Order at ¶¶ 446-459. In the Order, the Commission strikes a balance between providing state commissions with more

useful information and recognizing the need to protect market monitors from being overrun by requests for information from state commissions.

Section 8.1 of Appendix P, and its related sub-parts, reflects the ISO's implementation of this approach. The first sentence of § 8.1 establishes the general rule that DMM must consider tailored requests from the CPUC for information or data on general market trends and the performance of the wholesale markets. The second sentence of § 8.1, as well as the sub-parts to § 8.1, reflects the limits FERC placed on the CPUC's right to obtain the information or data.

The limitations on the CPUC's ability to request data and information closely track the language in the Order. For example, the second sentence of § 8.1 allows DMM to deny a request where complying with it would be unduly burdensome. This reflects the Order, which states: "We therefore direct that [market monitoring units], in the first instance, determine whether a request would be unduly burdensome. If so, it need not perform the requested study." Order at ¶ 447.

In several instances, FERC acknowledges that complying with a request from a state commission may raise confidentiality concerns. In one instance it notes that confidential "information may nonetheless be provided, if appropriate non-disclosure agreements are executed." Order at ¶ 448.<sup>2</sup> This statement is the reason for § 8.1.1, which permits DMM to submit sensitive information about general market trends and performance "only if the CPUC agrees in writing that the information shared will be covered under the terms of the" existing CPUC/ISO confidentiality agreement, or its successor agreement. The ISO and the CPUC have operated successfully under this continuing agreement for nearly five years.

Also worthy of mention is FERC's statement that a market monitor is not to entertain requests from a state commission "for information designed to aid state enforcement actions." ¶ 449. In referring generally to "state enforcement actions," rather than "state utility commission enforcement actions," FERC suggests that the CPUC could not make a request that would aid its own enforcement action, nor could it request data or information that it would then turn over to another state governmental entity to aid that entity's enforcement action. That is why § 8.1.3 refers broadly to a request that "is designed to aid an enforcement action by an instrumentality or political subdivision of the State of California against a specific company."

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<sup>2</sup> The ISO is mindful of the Commission's instruction in ¶ 448 to develop, with stakeholders, confidentiality provisions that protect commercially sensitive material without being overly restrictive and to submit them in a subsequent tariff filing. Since ISO startup in 1998, § 20 of the tariff has contained reasonable confidentiality provisions that were the product of stakeholder involvement. Nevertheless, once MRTU has been implemented fully, the ISO looks forward to initiating a full stakeholder process to revisit § 20 and ensure that the ISO's overall confidentiality policy both takes account of current stakeholder sentiment and benefits from stakeholder input on how to best balance the competing goals of fostering transparency and confidentiality.

### Direct Incorporation of Language from the Order

Some of the changes mandated in the Order required only minimal changes, either because the ISO's tariff already complied substantially with the Order and/or because the Order gave explicit instructions as to how compliance could be achieved.

A good example of the former situation is § 20.4(a) of the tariff, which covers the release of individual bid data. The Order mandated that ISOs release bid data within three months, unless the ISO can demonstrate a collusion concern. Order at ¶ 424. The tariff currently orders at least a six-month lag. As DMM did not express any concern with a three-month lag, compliance was achieved simply by changing the phrase "provided that such data are published no sooner than six months" to "within three months."

Good examples of the latter situation are seen in Appendix P with § 9 (ethics requirements for DMM employees), § 11 (DMM referrals to FERC of suspected market violations), and § 12 (DMM referrals to FERC for proposed market design changes). The relevant portion of the CFR that was amended pursuant to the Order includes seven specific provisions that must be included in the tariff. 18 CFR § 35.28 (g)(3)(vi). With this provision, compliance was a matter of directly incorporating the seven provisions, along with adding Section 9.7.1 to define the term "seeking employment" and including Section 9.8 to make clear that DMM employees will still be subject to the ISO's generally applicable employee code of conduct. The sections covering DMM referrals were also largely a matter of incorporating language from the Order and the CFR. 18 CFR § § 35.28 (g)(3)(iv) & (v).